

MOTION INFORMATION STATEMENT

Docket Number(s): 20-2400

Caption [use short title] \_\_\_\_\_

Motion for: Leave to File Amici Curiae Brief in  
Support of Defendants-Appellees and  
Amicus Curiae NYCLU

Uniformed Fire Officers Ass'n, et al. v. De Blasio,  
et al.

Set forth below precise, complete statement of relief sought:  
The Reporters Committee for Freedom of the  
Press ("RCFP") and 32 media organizations  
move for leave to file an amici curiae brief in  
support of Defendants-Appellees' and  
NYCLU's Opposition to Plaintiffs-Appellants'  
Motion for Stay Pending Appeal

MOVING PARTY: RCFP and 32 News Media Organizations  
 Plaintiff  Defendant  
 Appellant/Petitioner  Appellee/Respondent

OPPOSING PARTY: N/A

MOVING ATTORNEY: Katie Townsend  
[name of attorney, with firm, address, phone number and e-mail]

OPPOSING ATTORNEY: N/A

RCFP  
1156 15th St NW, Ste. 1020  
Washington, D.C. 20005

(202) 795-9300  
ktownsend@rcfp.org

Court-Judge/Agency appealed from: U.S. District Judge Katherine P. Failla, Southern District of New York

Please check appropriate boxes:  
Has movant notified opposing counsel (required by Local Rule 27.1):  
 Yes  No (explain): \_\_\_\_\_  
Opposing counsel's position on motion:  
 Unopposed  Opposed  Don't Know  
Does opposing counsel intend to file a response:  
 Yes  No  Don't Know

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND  
INJUNCTIONS PENDING APPEAL:  
Has request for relief been made below?  Yes  No  
Has this relief been previously sought in this Court?  Yes  No  
Requested return date and explanation of emergency: \_\_\_\_\_

Is oral argument on motion requested?  Yes  No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set?  Yes  No If yes, enter date: \_\_\_\_\_

Signature of Moving Attorney: /s/ Katie Townsend Date: 8/13/2020

Service by:  CM/ECF  Other [Attach proof of service]

IN THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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**No. 20-2400**

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UNIFORMED FIRE OFFICERS ASSOCIATION, *et al.*,

*Plaintiffs-Appellants,*

v.

BILL DE BLASIO, in his official capacity  
as Mayor of the City of New York, *et al.*,

*Defendants-Appellees,*

COMMUNITIES UNITED FOR POLICE REFORM;  
THE NEW YORK TIMES COMPANY,

*Intervenors.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF NEW YORK, No. 20-CV-05441-KPF

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**MOTION OF THE REPORTERS COMMITTEE FOR FREEDOM OF THE  
PRESS AND 32 NEWS MEDIA ORGANIZATIONS FOR LEAVE TO FILE  
AMICI CURIAE BRIEF IN SUPPORT OF DEFENDANTS-APPELLEES'  
AND AMICUS CURIAE NYCLU'S OPPOSITION TO PLAINTIFFS-  
APPELLANTS' MOTION FOR STAY PENDING APPEAL**

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Katie Townsend  
*Counsel of Record*  
Bruce D. Brown  
THE REPORTERS COMMITTEE FOR  
FREEDOM OF THE PRESS  
1156 15th St NW, Suite 1020  
Washington, DC 20005  
Phone: (202) 795-9300  
Fax: (202) 795-9310  
[ktownsend@rcfp.org](mailto:ktownsend@rcfp.org)

Pursuant to Federal Rule of Appellate Procedure 27 and Local Rule 27.1, the Reporters Committee for Freedom of the Press (“Reporters Committee”) and thirty-two media organizations (collectively, “amici”) move for leave to file an amicus brief in support of Defendants-Appellees’ and Amicus Curiae New York Civil Liberties Union’s (“NYCLU”) Opposition to Plaintiffs-Appellants’ Motion for Stay Pending Appeal.<sup>1</sup> As required by Local Rule 27.1(d), amici state that amici have notified counsel for Plaintiffs-Appellants, counsel for Defendants-Appellees, and counsel for the NYCLU of their intent to file the amicus brief. Counsel for Plaintiffs-Appellants stated that they do not oppose the filing of the amicus brief, if the Court believes the current amici and parties are not sufficient to

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<sup>1</sup> The amici are: The Reporters Committee, Advance Publications, Inc., The Associated Press, Atlantic Media, Inc., Boston Globe Media Partners, LLC, BuzzFeed, CBS Broadcasting Inc., on behalf of CBS News and WCBS-TV, The Center for Investigative Reporting (d/b/a Reveal), Daily News, LP, Dow Jones & Company, Inc., The E.W. Scripps Company, First Amendment Coalition, Gannett Co., Inc., Hearst Corporation, International Documentary Assn., Investigative Reporting Workshop at American University, Los Angeles Times Communications LLC, The Media Institute, MediaNews Group Inc., Mother Jones, MPA - The Association of Magazine Media, National Newspaper Association, National Press Photographers Association, New York News Publishers Association, The News Leaders Association, Newsday LLC, Penguin Random House LLC, POLITICO LLC, Radio Television Digital News Association, Society of Environmental Journalists, Society of Professional Journalists, Tully Center for Free Speech, and The Washington Post. Full descriptions of each of the amici are included in the amicus brief as Appendix A. Corporate disclosure statements for all amici are included before the table of contents in the amicus brief.

represent all interests. Counsel for Defendants-Appellees take no position on the filing of the amicus brief. Counsel for Amicus Curiae NYCLU consent to the filing of the amicus brief. Amici are not aware of whether counsel for Plaintiffs-Appellants intends to file a response to this motion.

The proposed amicus brief addresses matters “relevant to the disposition” of Plaintiffs-Appellants’ Motion for Stay Pending Appeal and is submitted to aid the Court in ruling on that Motion. Fed. R. App. P. 29(a)(3) (providing that a motion for leave to file an amicus brief during a court’s initial consideration of a case on the merits must state “the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case”). As members of the press and advocates for the First Amendment and newsgathering rights of the news media, amici have a strong interest in ensuring that court-ordered injunctions do not operate as unconstitutional prior restraints to prohibit the publication of newsworthy information.

The proposed amicus brief will aid the Court by explaining the serious constitutional implications of a stay pending appeal, which would be a prior restraint. Amici urge the Court to deny Plaintiffs-Appellants’ Motion for Stay Pending Appeal, as such a stay would infringe on core First Amendment freedoms and would further delay release of records in which there is significant public interest. For these reasons, amici respectfully request leave to file the proposed

amicus brief in support of Defendants-Appellees' and Amicus Curiae NYCLU's  
Opposition to Plaintiffs-Appellants' Motion for Stay Pending Appeal.

Dated: August 13, 2020

Respectfully Submitted,

/s/ Katie Townsend

Katie Townsend

*Counsel of Record*

Bruce D. Brown

THE REPORTERS COMMITTEE FOR

FREEDOM OF THE PRESS

1156 15th St. NW, Suite 1020

Washington, D.C. 20005

Phone: (202) 795-9300

Fax: (202) 795-9310

ktownsend@rcfp.org

IN THE UNITED STATES COURT OF APPEALS  
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**No. 20-2400**

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as Mayor of the City of New York, *et al.*,

*Defendants-Appellees,*

COMMUNITIES UNITED FOR POLICE REFORM;  
THE NEW YORK TIMES COMPANY,

*Intervenors.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF NEW YORK, No. 20-CV-05441-KPF

---

**[PROPOSED] BRIEF OF AMICI CURIAE  
THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS  
AND 32 NEWS MEDIA ORGANIZATIONS IN SUPPORT OF  
DEFENDANTS-APPELLEES' AND AMICUS CURIAE NYCLU'S  
OPPOSITION TO PLAINTIFFS-APPELLANTS' MOTION FOR STAY  
PENDING APPEAL**

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Katie Townsend  
*Counsel of Record*  
Bruce D. Brown  
THE REPORTERS COMMITTEE FOR  
FREEDOM OF THE PRESS  
1156 15th St NW, Suite 1020  
Washington, DC 20005  
Phone: (202) 795-9300  
Fax: (202) 795-9310  
ktownsend@rcfp.org



## **CORPORATE DISCLOSURE STATEMENT**

The Reporters Committee for Freedom of the Press is an unincorporated association of reporters and editors with no parent corporation and no stock.

Advance Publications, Inc. (“Advance”) certifies that it has no parent corporation and no publicly held corporation owns any of its stock.

The Associated Press is a global news agency organized as a mutual news cooperative under the New York Not-For-Profit Corporation law. It is not publicly traded.

Atlantic Media, Inc. is a privately held media company, and no publicly held corporation owns 10% or more of its stock.

Boston Globe Media Partners, LLC, is a privately held company. No publicly held corporation owns 10% or more of its stock.

BuzzFeed Inc. is a privately owned company, and National Broadcasting Company (NBC) owns 10% or more of its stock.

CBS Broadcasting Inc., on behalf of CBS News and WCBS-TV, is an indirect, wholly owned subsidiary of ViacomCBS Inc. ViacomCBS Inc. is a publicly traded company. National Amusements, Inc., a privately held company, beneficially owns the majority of the Class A voting stock of ViacomCBS Inc. ViacomCBS Inc. is not aware of any publicly held entity owning 10% or more of its total common stock, i.e., Class A and Class B on a combined basis.

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Dow Jones & Company, Inc. ("Dow Jones") is an indirect subsidiary of News Corporation, a publicly held company. Ruby Newco, LLC, an indirect subsidiary of News Corporation and a non-publicly held company, is the direct parent of Dow Jones. News Preferred Holdings, Inc., a subsidiary of News Corporation, is the direct parent of Ruby Newco, LLC. No publicly traded corporation currently owns 10% or more of the stock of Dow Jones.

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The Investigative Reporting Workshop is a privately funded, nonprofit news organization based at the American University School of Communication in Washington. It issues no stock.

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The Media Institute is a 501(c)(3) non-stock corporation with no parent corporation.

MediaNews Group Inc. is a privately held company. No publicly held company owns 10% or more of its equity interests.

The Foundation for National Progress, dba Mother Jones, is a nonprofit, public benefit corporation. It has no publicly held shares.

MPA - The Association of Magazine Media has no parent companies, and no publicly held company owns more than 10% of its stock.

National Newspaper Association is a non-stock nonprofit Missouri corporation. It has no parent corporation and no subsidiaries.

National Press Photographers Association is a 501(c)(6) nonprofit organization with no parent company. It issues no stock and does not own any of the party's or amicus' stock.

The New York News Publishers Association has no parent company and issues no stock.

The News Leaders Association has no parent corporation and does not issue any stock.

Newsday LLC is a Delaware limited liability company whose members are Tillandsia Media Holdings LLC and Newsday Holdings LLC. Newsday Holdings LLC is an indirect subsidiary of Cablevision Systems Corporation. Cablevision Systems Corporation is (a) directly owned by Altice USA, Inc., a Delaware corporation which is publicly traded on the New York Stock Exchange and (b) indirectly owned by Altice N.V., a Netherlands public company.

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POLITICO LLC's parent corporation is Capitol News Company. No publicly held corporation owns 10% or more of POLITICO LLC's stock.

Radio Television Digital News Association is a nonprofit organization that has no parent company and issues no stock.

The Society of Environmental Journalists is a 501(c)(3) non-profit educational organization. It has no parent corporation and issues no stock.

Society of Professional Journalists is a non-stock corporation with no parent company.

The Tully Center for Free Speech is a subsidiary of Syracuse University.

WP Company LLC d/b/a The Washington Post is a wholly owned subsidiary of Nash Holdings LLC, a holding company owned by Jeffrey P. Bezos. WP Company LLC and Nash Holdings LLC are both privately held companies with no securities in the hands of the public.

## TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	vii
STATEMENT OF IDENTITY AND INTEREST OF AMICI CURIAE .....	1
SOURCE OF AUTHORITY TO FILE .....	2
INTRODUCTION .....	3
SUMMARY OF ARGUMENT .....	4
ARGUMENT.....	5
I.    An order enjoining NYCLU from publishing the CCRB data is an unconstitutional prior restraint.....	5
A. Prior restraints bear a “heavy presumption” of unconstitutionality. ....	6
B. Each day the TRO remains in effect as to NYCLU causes constitutional harm. ....	7
II.   Delayed disclosure of the records at issue will cause irreparable harm. ....	9
CONCLUSION.....	12
APPENDIX A.....	13
CERTIFICATE OF COMPLIANCE.....	23

## TABLE OF AUTHORITIES

### **Cases**

Alexander v. United States, 509 U.S. 544 (1993) .....	5
Bantam Books, Inc. v. Sullivan, 372 U.S. 58 (1963) .....	5, 6, 8
<i>Bartnicki v. Vopper</i> , 532 U.S. 514 (2001) .....	8
<i>CBS, Inc. v. Davis</i> , 510 U.S. 1315 (1994) .....	7
<i>Freedman v. Maryland</i> , 380 U.S. 51 (1965).....	7
<i>Met. Opera Ass’n v. Local 100</i> , 239 F.3d 172 (2d Cir. 2001) .....	6
<i>N.Y. Times Co. v. United States</i> , 403 U.S. 713 (1971) (per curiam) .....	6, 7, 8, 9
<i>Near v. Minnesota</i> , 283 U.S. 697 (1931).....	6
Nebraska Press Ass’n v. Stuart, 423 U.S. 1327 (Blackmun, Circuit Justice 1975) .....	9
Nebraska Press Ass’n v. Stuart, 427 U.S. 539 (1976) .....	6, 7
Reno v. Am. Civil Liberties Union, 521 U.S. 844 (1997).....	8

### **Statutes and Legislative Materials**

Del. Code Ann. tit. 11, § 9200 .....	3
S. Assemb. B. A10611 (N.Y. 2020) .....	3

### **Other Authorities**

Ben Poston & Maya Lau, Previously Secret LAPD Records Reveal Lying, Sexual Misconduct by Officers, L.A. Times (Mar. 12, 2019).....	11
Derek Willis, et al., <i>The NYPD Files</i> , ProPublica (July 26, 2020).....	11
Kendall Taggart & Mike Hayes, Here’s Why BuzzFeed Is Publishing Thousands of Secret NYPD Documents, BuzzFeed News (Apr. 16, 2018).....	10
Kendall Taggart, NYPD Discipline Needs More Transparency, A Panel of Experts Said, BuzzFeed News (Feb. 1, 2019) .....	10
Luis Ferré-Sadurní & Jesse McKinley, <i>N.Y. Bans Chokehold and Approves Other Measures to Restrict Police</i> , N.Y. Times (June 12, 2020) .....	3
Rob Arthur, Bad Chicago Cops Spread Their Misconduct Like a Disease, The Intercept (Aug. 16, 2018).....	11

Robert Lewis, et al., *Is Police Misconduct a Secret in Your State?*, WNYC News  
 (Oct. 15, 2015)..... 3

Shaila Dewan & Serge F. Kovalski, *Thousands of Complaints Do Little to  
 Change Police Ways*, N.Y. Times (May 30, 2020) ..... 9

Stephanie Wykstra, *The Fight for Transparency in Police Misconduct, Explained*,  
 Vox (June 16, 2020) ..... 9, 10

William Bender & David Gambacorta, *Inside the Once-Secret Misconduct Files of  
 27 Philadelphia Police Officers*, Phil. Inquirer (Sept. 12, 2019) ..... 10

**Rules**

Fed. R. App. P. 27..... 2

Fed. R. App. P. 29..... 1

Local R. 27.1..... 2

Local R. 29.1..... 1



## **STATEMENT OF IDENTITY AND INTEREST OF AMICI CURIAE**

Amici curiae are the Reporters Committee for Freedom of the Press, Advance Publications, Inc., The Associated Press, Atlantic Media, Inc., Boston Globe Media Partners, LLC, BuzzFeed, CBS Broadcasting Inc., on behalf of CBS News and WCBS-TV, The Center for Investigative Reporting (d/b/a Reveal), Daily News, LP, Dow Jones & Company, Inc., The E.W. Scripps Company, First Amendment Coalition, Gannett Co., Inc., Hearst Corporation, International Documentary Assn., Investigative Reporting Workshop at American University, Los Angeles Times Communications LLC, The Media Institute, MediaNews Group Inc., Mother Jones, MPA - The Association of Magazine Media, National Newspaper Association, National Press Photographers Association, New York News Publishers Association, The News Leaders Association, Newsday LLC, Penguin Random House LLC, POLITICO LLC, Radio Television Digital News Association, Society of Environmental Journalists, Society of Professional Journalists, Tully Center for Free Speech, and The Washington Post. A supplemental statement of identity and interest of amici curiae is included as Appendix A.<sup>1</sup>

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<sup>1</sup> Pursuant to Fed. R. App. P. 29(a)(4)(E) and Local R. 29.1(b), amici state as follows: no party's counsel authored the brief in whole or in part, and no party, party's counsel, or any person other than amici curiae or their counsel contributed money that was intended to fund preparing or submitting this brief.

Amici are members of the news media and organizations that advocate on behalf of the First Amendment rights of the press and the public. Many of the amici regularly report on police misconduct and all of the amici have a direct interest in ensuring that journalists and news organizations remain free from unconstitutional restrictions on their ability to do so. Amici are gravely concerned by Plaintiffs-Appellants' request for the imposition of a stay pending their appeal of the district court's order modifying a temporary restraining order entered in this action. The stay sought by Plaintiffs-Appellants is a prior restraint on non-party amicus curiae New York Civil Liberties Union ("NYCLU"). Amici write to emphasize the unconstitutionality of this prior restraint, the importance of public access to police misconduct records, including the Civilian Complaint Review Board ("CCRB") data at issue, and the harm caused by delayed disclosure.

#### **SOURCE OF AUTHORITY TO FILE**

Pursuant to Federal Rule of Appellate Procedure 27 and Local Rule 27.1, amici have filed a motion for leave to file this amicus brief in support of Defendants-Appellees' and Amicus Curiae NYCLU's Opposition to Plaintiffs-Appellants' Motion for Stay Pending Appeal. Amici have notified counsel for Defendants-Appellees, Amicus Curiae NYCLU, and Plaintiffs-Appellants of their intent to file an amicus brief. Counsel for Plaintiffs-Appellants stated that they do not oppose the filing of this amicus brief, if the Court believes the current amici

and parties are not sufficient to represent all interests. Counsel for Defendants-Appellees take no position on the filing of this amicus brief. Counsel for Amicus Curiae NYCLU consent to the filing of this amicus brief.

## **INTRODUCTION**

On June 12, 2020, New York Governor Andrew Cuomo signed into law Assembly Bill A10611, which repealed New York Civil Rights Law Section 50-a (“Section 50-a”). S. Assemb. B. A10611 (N.Y. 2020); *see also* Luis Ferré-Sadurní & Jesse McKinley, *N.Y. Bans Chokehold and Approves Other Measures to Restrict Police*, N.Y. Times (June 12, 2020), <https://perma.cc/44CG-4UMX>. Prior to the repeal, Section 50-a shielded police misconduct records from public scrutiny, making New York an outlier with respect to the extent of secrecy afforded such records. *See* Robert Lewis, et al., *Is Police Misconduct a Secret in Your State?*, WNYC News (Oct. 15, 2015), <https://perma.cc/EC7G-EP3J>.<sup>2</sup>

Following the repeal of Section 50-a, NYCLU obtained a database containing previously unavailable police misconduct records from the CCRB through a New York Freedom of Information Law (“FOIL”) request. New York Civil Liberties Union’s Mem. in Opp’n to Pls.’ Req. for Emergency Stay Pending Appeal at 4, ECF No. 16-1. NYCLU intended to publish the CCRB data on

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<sup>2</sup> Delaware is now the only state with a law explicitly deeming police disciplinary records confidential. Del. Code Ann. tit. 11, § 9200.

July 23, 2020. *Id.* at 1. Although NYCLU is not a party to the above-captioned matter, it participated in the district court proceedings as amicus curiae.

On July 22, 2020, the district court entered a temporary restraining order (“TRO”) enjoining NYCLU, as well as Defendants-Appellees, from publication of any records previously shielded by Section 50-a, including the CCRB data received through NYCLU’s FOIL request. Tr. of July 22, 2020 Proceedings at 79: 13–15; 80: 6–13; 88: 8–11, filed as Ex. B to Pls.-Appellants’ Mot. for Stay, ECF No. 9. The district court subsequently modified the TRO to remove NYCLU from its scope. Order at 1, *Uniformed Fire Officers Ass’n, et al. v. de Blasio, et al.*, No. 20-Civ-5441-KPF (S.D.N.Y. July 29, 2020), ECF No. 38 (the “July 29, 2020 Order”). Plaintiffs-Appellants appealed the July 29, 2020 Order and moved this Court for a stay pending appeal. Pls.-Appellants’ Mot. for Stay, ECF No. 9. This Court granted an administrative stay of the July 29, 2020 Order pending review of Plaintiffs-Appellants’ motion to stay pending appeal by a three-judge panel. Order, ECF No. 33.

### **SUMMARY OF ARGUMENT**

Now before the Court is the question of whether the district court’s modification of the TRO to remove non-party amicus curiae NYCLU from its ambit should be stayed pending appeal of the July 29, 2020 Order. As members and representatives of the news media, amici write to urge the Court to deny

Plaintiffs-Appellants’ motion to stay. The district court’s July 29, 2020 Order necessarily modified the TRO, which had prohibited NYCLU from publishing information in its possession and, thus, was an unconstitutional prior restraint. The stay pending appeal of that July 29, 2020 Order that is now sought by Plaintiffs-Appellants seeks to reinstate the dissolved TRO as to NYCLU pending resolution of their appeal and, accordingly, is itself a prior restraint that raises core First Amendment concerns and is presumptively unconstitutional. *See Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963). The potential harms asserted by Plaintiffs-Appellants do not approach justifying this abridgement of First Amendment freedoms, particularly in light of the importance and newsworthiness of the records NYCLU wishes to publish. For the reasons herein, amici urge the Court to deny Plaintiffs-Appellants’ motion for a stay pending appeal.

## **ARGUMENT**

### **I. An order enjoining NYCLU from publishing the CCRB data is an unconstitutional prior restraint.**

If the Court orders the stay sought by Plaintiffs-Appellants, NYCLU will be prohibited from publishing information of immense public interest that is in its possession pending appeal; the stay is, thus, a prior restraint. *Alexander v. United States*, 509 U.S. 544, 550 (1993) (“Temporary restraining orders and permanent injunctions—i.e., court orders that actually forbid speech activities—are classic examples of prior restraints.”). A prior restraint strikes at the very heart of the First

Amendment. Plaintiffs-Appellants' motion to stay, if granted, would violate nearly a century of U.S. Supreme Court precedent rejecting such unconstitutional restrictions on freedoms of speech and the press.

A. Prior restraints bear a “heavy presumption” of unconstitutionality.

A prior restraint is “the most serious and the least tolerable infringement on First Amendment rights.” *Nebraska Press Ass’n v. Stuart*, 427 U.S. 539, 559 (1976). While “a threat of criminal or civil sanctions after publication ‘chills’ speech, prior restraint ‘freezes’ it.” *Id.* Because prior restraints prevent information from being heard or published altogether, they directly attack the marketplace of ideas. *See id.* Accordingly, a prior restraint bears a “heavy presumption against its constitutional validity.” *Bantam Books*, 372 U.S. at 70. And, as this Court has explained, “[w]hen a prior restraint takes the form of a court-issued injunction, the risk of infringing on speech protected under the First Amendment increases.” *Met. Opera Ass’n v. Local 100*, 239 F.3d 172, 176–77 (2d Cir. 2001).

Prior restraints are permissible only in the rarest, most extreme circumstances, and the party seeking a prior restraint must satisfy a heavy burden to justify such a restriction on speech. *N.Y. Times Co. v. United States*, 403 U.S. 713, 714 (1971) (per curiam); *Near v. Minnesota*, 283 U.S. 697, 713 (1931). This “most extraordinary remed[y]” is available “only where the evil that would result

from the reportage is both great and certain and cannot be mitigated by less intrusive means.” *CBS, Inc. v. Davis*, 510 U.S. 1315, 1318 (1994) (citing *Nebraska Press Ass’n*, 427 U.S. at 562).

The U.S. Supreme Court has found competing constitutional interests, such as the Sixth Amendment rights of criminal defendants, insufficiently compelling to justify a prior restraint. *Nebraska Press Ass’n*, 427 U.S. at 570. The risk of significant harm to a business’s economic interests similarly falls short of the high bar needed to justify a prior restraint. *Davis*, 510 U.S. at 1318. Most notably, even the protection of military secrets was held not to justify a prior restraint against publication of the Pentagon Papers. *See N.Y. Times Co.*, 403 U.S. at 713. As Justice Brennan wrote in his concurring opinion, “only governmental allegation and proof that publication must inevitably, directly, and immediately cause the occurrence of an event kindred to imperiling the safety of a transport already at sea can support even the issuance of an interim restraining order.” *Id.* at 726–27 (Brennan, J., concurring).

B. Each day the TRO remains in effect as to NYCLU causes constitutional harm.

The First Amendment protection against prior restraints applies with equal force to non-traditional publishers like NYCLU as it does to traditional news media organizations. *See Freedman v. Maryland*, 380 U.S. 51, 57 (1965) (noting in context of film industry, “it is as true here as of other forms of expression that

‘[a]ny system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity’”) (citing *Bantam Books*, 372 U.S. at 70); *cf. Reno v. Am. Civil Liberties Union*, 521 U.S. 844, 870 (1997) (making no distinction between the level of First Amendment protection accorded to speech on the internet and to other mediums of communication). These protections would also apply with equal force even *if* the CCRB acted unlawfully in providing NYCLU with the Database and even *if* NYCLU knew or had reason to know that the CCRB acted unlawfully—neither of which is true. New York Civil Liberties Union’s Mem. in Opp’n to Pls.’ Req. for Emergency Stay Pending Appeal at 15, ECF No. 16-1; Decl. of Christopher Dunn at 3, *Uniformed Fire Officers Ass’n, et al. v. de Blasio, et al.*, No. 20-Civ-5441-KPF (S.D.N.Y. July 24, 2020), ECF No. 16-1; *Bartnicki v. Vopper*, 532 U.S. 514, 514 (2001) (finding that, even when reporter knew that a recording on matter of public concern had been illegally intercepted, reporter could not be held liable for its publication).

The purported harms of publication identified by Plaintiffs-Appellants in the district court below—“serious issues that transcend reputation, that affect employment, [and] that affect safety,” Tr. of July 22, 2020 Proceedings at 82: 9–12—are generalized, nonspecific, and insufficiently serious to justify such a severe infringement on First Amendment freedoms, *see generally N.Y. Times Co.*, 403 U.S. at 713. Scholars have found “scant evidence” and a “total lack of data”



supporting the kinds of harms asserted by Plaintiffs-Appellants. Stephanie Wykstra, *The Fight for Transparency in Police Misconduct, Explained*, Vox (June 16, 2020), <https://bit.ly/30vGRg4>. Such assertions on the part of Plaintiffs-Appellants fall far short of proof that publication will “inevitably, directly, and immediately cause” the type of severe harm that could justify a prior restraint on publication, *see N.Y. Times Co.*, 403 U.S. at 726–27 (Brennan, J., concurring). And a further stay of the July 29, 2020 Order would be fundamentally at odds with the fact that, where publication is subject to prior restraint, “each passing day may constitute a separate and cognizable infringement of the First Amendment,” *Nebraska Press Ass’n v. Stuart*, 423 U.S. 1327, 1329 (Blackmun, Circuit Justice 1975).

## **II. Delayed disclosure of the records at issue will cause irreparable harm.**

The abuse of power by public servants is a matter of abiding public concern. This is particularly true with regard to police misconduct, an issue that the killing of George Floyd by a Minneapolis police officer with numerous past misconduct complaints has brought to the forefront of the public’s consciousness. *See* Shaila Dewan & Serge F. Kovalski, *Thousands of Complaints Do Little to Change Police Ways*, N.Y. Times (May 30, 2020), <https://perma.cc/XS5L-F2HJ>. Indeed, the Legislature prioritized repeal of Section 50-a in large measure as a response to heightened public awareness of the importance of holding police officers

accountable for misconduct, and concomitant calls for increased transparency. *See* Wykstra, *supra*.

Reporting by the press that analyzes and incorporates records of police misconduct enables the public to better understand patterns of misconduct, application of disciplinary policy, and the role of qualified immunity. For example, in 2018 BuzzFeed News published and analyzed a collection of disciplinary findings for approximately 1,800 New York Police Department (“NYPD”) officers shielded by Section 50-a, that were provided by an anonymous source. Kendall Taggart & Mike Hayes, *Here’s Why BuzzFeed Is Publishing Thousands of Secret NYPD Documents*, BuzzFeed News (Apr. 16, 2018), <https://perma.cc/XK2L-9NZB>. BuzzFeed’s reporting based on these records revealed unequal and inconsistent application of NYPD disciplinary policies, prompting the commission of an independent panel to investigate the NYPD’s disciplinary system. Kendall Taggart, *NYPD Discipline Needs More Transparency, A Panel of Experts Said*, BuzzFeed News (Feb. 1, 2019), <https://perma.cc/2MGV-ELUX>.

Access to police misconduct records across the nation has made possible similar powerful reporting in the public interest. *See, e.g.*, William Bender & David Gambacorta, *Inside the Once-Secret Misconduct Files of 27 Philadelphia Police Officers*, Phil. Inquirer (Sept. 12, 2019), <https://perma.cc/7AX2-N7TD>; Ben

Poston & Maya Lau, *Previously Secret LAPD Records Reveal Lying, Sexual Misconduct by Officers*, L.A. Times (Mar. 12, 2019), <https://perma.cc/SQ77-BMZ4>; Rob Arthur, *Bad Chicago Cops Spread Their Misconduct Like a Disease*, The Intercept (Aug. 16, 2018), <https://perma.cc/3SQU-524T> (analyzing data from searchable database of Chicago police misconduct records, finding higher rates of misconduct among officers who were exposed to colleagues already engaged in misconduct).

At least one news outlet, ProPublica, has already published a subset of the same records obtained by NYCLU through FOIL in the form of a searchable online database. See Derek Willis, et al., *The NYPD Files*, ProPublica (July 26, 2020), <https://projects.propublica.org/nypd-ccrb/>. Plaintiffs-Appellants have not demonstrated how ProPublica's publication of much of the same information in the hands of NYCLU has caused any harm, whatsoever. They have also not explained how further publication of these records by NYCLU could possibly worsen any such harm.

The CCRB data at issue contains records that are of significant public interest, and the publication of that information will not result in the exceedingly rare harm sufficient to justify an ongoing prior restraint on its publication by NYCLU. The TRO initially put in place by the district court, below, has already caused significant constitutional harm by prohibiting NYCLU's publication of the

CCRB data for several weeks. Further delay pending appeal will only exacerbate this irreparable harm.

### **CONCLUSION**

For the reasons stated herein, amici respectfully urge the Court to deny Plaintiffs-Appellants' motion for a stay pending appeal.

Respectfully submitted on this 13th day of August, 2020.

/s/ Katie Townsend  
Katie Townsend  
*Counsel of Record*  
Bruce D. Brown  
THE REPORTERS COMMITTEE FOR  
FREEDOM OF THE PRESS  
1156 15th St NW, Suite 1020  
Washington, DC 20005  
Phone: (202) 795-9300  
Fax: (202) 795-9310  
ktownsend@rcfp.org

## APPENDIX A

### SUPPLEMENTAL STATEMENT OF IDENTITY OF AMICI CURIAE

**The Reporters Committee for Freedom of the Press** is an unincorporated nonprofit association. The Reporters Committee was founded by leading journalists and media lawyers in 1970 when the nation's news media faced an unprecedented wave of government subpoenas forcing reporters to name confidential sources. Today, its attorneys provide pro bono legal representation, amicus curiae support, and other legal resources to protect First Amendment freedoms and the newsgathering rights of journalists.

**Advance Publications, Inc.** is a diversified privately held company that operates and invests in a broad range of media, communications and technology businesses. Its operating businesses include Conde Nast's global magazine and digital brand portfolio, including titles such as Vogue, Vanity Fair, The New Yorker, Wired, and GQ, local news media companies producing newspapers and digital properties in 10 different metro areas and states, and American City Business Journals, publisher of business journals in over 40 cities.

**The Associated Press ("AP")** is a news cooperative organized under the Not-for-Profit Corporation Law of New York. The AP's members and subscribers include the nation's newspapers, magazines, broadcasters, cable news services and Internet content providers. The AP operates from 280 locations in more than 100

countries. On any given day, AP's content can reach more than half of the world's population.

**Atlantic Media, Inc.** is a privately held, integrated media company that publishes *The Atlantic* and *National Journal*. These award-winning titles address topics in national and international affairs, business, culture, technology and related areas, as well as cover political and public policy issues at federal, state and local levels. *The Atlantic* was founded in 1857 by Oliver Wendell Holmes, Ralph Waldo Emerson, Henry Wadsworth Longfellow and others.

**Boston Globe Media Partners, LLC** publishes The Boston Globe, the largest daily newspaper in New England.

**BuzzFeed** is a social news and entertainment company that provides shareable breaking news, original reporting, entertainment, and video across the social web to its global audience of more than 200 million.

**CBS Broadcasting Inc., on behalf of CBS News and WCBS-TV,** produces and broadcasts news, public affairs and entertainment programming. Its CBS News Division produces morning, evening and weekend news programming, as well as news and public affairs newsmagazine shows, such as "60 Minutes" and "48 Hours." CBS Broadcasting Inc. also directly owns and operates television stations across the country, including WCBS-TV in New York City.

**The Center for Investigative Reporting (d/b/a Reveal)**, founded in 1977, is the nation's oldest nonprofit investigative newsroom. Reveal produces investigative journalism for its website <https://www.revealnews.org/>, the Reveal national public radio show and podcast, and various documentary projects. Reveal often works in collaboration with other newsrooms across the country.

**Daily News, LP** publishes the New York Daily News, a daily newspaper that serves primarily the New York City metropolitan area and is one of the largest papers in the country by circulation. The Daily News' website, NYDailyNews.com, receives approximately 100 million page views each month.

**Dow Jones & Company** is the world's leading provider of news and business information. Through *The Wall Street Journal*, *Barron's*, MarketWatch, Dow Jones Newswires, and its other publications, Dow Jones has produced journalism of unrivaled quality for more than 130 years and today has one of the world's largest newsgathering operations. Dow Jones's professional information services, including the Factiva news database and Dow Jones Risk & Compliance, ensure that businesses worldwide have the data and facts they need to make intelligent decisions. Dow Jones is a News Corp company.

**The E.W. Scripps Company** serves audiences and businesses through local television, with 60 television stations in 42 markets. Scripps also owns Newsy, the next-generation national news network; national broadcast networks Bounce, Grit,

Escape, Laff and Court TV; and Triton, the global leader in digital audio technology and measurement services. Scripps serves as the long-time steward of the nation's largest, most successful and longest-running educational program, the Scripps National Spelling Bee.

**First Amendment Coalition** is a nonprofit public interest organization dedicated to defending free speech, free press and open government rights in order to make government, at all levels, more accountable to the people. The Coalition's mission assumes that government transparency and an informed electorate are essential to a self-governing democracy. To that end, we resist excessive government secrecy (while recognizing the need to protect legitimate state secrets) and censorship of all kinds.

**Gannett** is the largest local newspaper company in the United States. Our 260 local daily brands in 46 states and Guam—together with the iconic USA TODAY—reach an estimated digital audience of 140 million each month.

**Hearst** is one of the nation's largest diversified media, information and services companies with more than 360 businesses. Its major interests include ownership of 15 daily and more than 30 weekly newspapers, including the San Francisco Chronicle, Houston Chronicle, and Albany Times Union; hundreds of magazines around the world, including Cosmopolitan, Good Housekeeping, ELLE, Harper's BAZAAR and O, The Oprah Magazine; 31 television stations such as



KCRA-TV in Sacramento, California, and KSBW-TV in Monterey/Salinas, California, which reach a combined 19 percent of U.S. viewers; ownership in leading cable television networks such as A&E, HISTORY, Lifetime and ESPN; global ratings agency Fitch Group; Hearst Health; significant holdings in automotive, electronic and medical/pharmaceutical business information companies; Internet and marketing services businesses; television production; newspaper features distribution; and real estate.

**The International Documentary Association (“IDA”)** is dedicated to building and serving the needs of a thriving documentary culture. Through its programs, the IDA provides resources, creates community, and defends rights and freedoms for documentary artists, activists, and journalists.

**The Investigative Reporting Workshop**, based at the School of Communication (SOC) at American University, is a nonprofit, professional newsroom. The Workshop publishes in-depth stories at [investigativereportingworkshop.org](http://investigativereportingworkshop.org) about government and corporate accountability, ranging widely from the environment and health to national security and the economy.

**Los Angeles Times Communications LLC** is one of the largest daily newspapers in the United States. Its popular news and information website, [www.latimes.com](http://www.latimes.com), attracts audiences throughout California and across the nation.

**The Media Institute** is a nonprofit foundation specializing in communications policy issues founded in 1979. The Media Institute exists to foster three goals: freedom of speech, a competitive media and communications industry, and excellence in journalism. Its program agenda encompasses all sectors of the media, from print and broadcast outlets to cable, satellite, and online services.

**MediaNews Group** is a leader in local, multi-platform news and information, distinguished by its award-winning original content and high quality local media. It is one of the largest news organizations in the United States, with print and online publications across the country.

**Mother Jones** is a nonprofit, reader-supported news organization known for ground-breaking investigative and in-depth journalism on issues of national and global significance.

**MPA – The Association of Magazine Media (“MPA”)** is the industry association for magazine media publishers. The MPA, established in 1919, represents the interests of close to 100 magazine media companies with more than 500 individual magazine brands. MPA’s membership creates professionally researched and edited content across all print and digital media on topics that include news, culture, sports, lifestyle and virtually every other

interest, avocation or pastime enjoyed by Americans. The MPA has a long history of advocating on First Amendment issues.

**National Newspaper Association** is a 2,000-member organization of community newspapers founded in 1885. Its members include weekly and small daily newspapers across the United States. It is based in Pensacola, Florida.

**The National Press Photographers Association (“NPPA”)** is a 501(c)(6) non-profit organization dedicated to the advancement of visual journalism in its creation, editing and distribution. NPPA’s members include television and still photographers, editors, students and representatives of businesses that serve the visual journalism industry. Since its founding in 1946, the NPPA has vigorously promoted the constitutional rights of journalists as well as freedom of the press in all its forms, especially as it relates to visual journalism. The submission of this brief was duly authorized by Mickey H. Osterreicher, its General Counsel.

**The New York News Publishers Association** is a trade association which represents daily, weekly and online newspapers throughout New York State. It was formed in 1927 to advance the freedom of the press and to represent the interests of the newspaper industry.

**The News Leaders Association** was formed via the merger of the American Society of News Editors and the Associated Press Media Editors in September 2019. It aims to foster and develop the highest standards of trustworthy, truth-

seeking journalism; to advocate for open, honest and transparent government; to fight for free speech and an independent press; and to nurture the next generation of news leaders committed to spreading knowledge that informs democracy.

**Newsday LLC (“Newsday”)** is the publisher of the daily newspaper, Newsday, and related news websites. Newsday is one of the nation’s largest daily newspapers, serving Long Island through its portfolio of print and digital products. Newsday has received 19 Pulitzer Prizes and other esteemed awards for outstanding journalism.

**Penguin Random House LLC** publishes adult and children’s fiction and nonfiction in print and digital trade book form in the U.S. The Penguin Random House global family of companies employ more than 10,000 people across almost 250 editorially and creatively independent imprints and publishing houses that collectively publish more than 15,000 new titles annually. Its publishing lists include more than 60 Nobel Prize laureates and hundreds of the world’s most widely read authors, among whom are many investigative journalists covering domestic politics, the justice system, business and international affairs.

**POLITICO** is a global news and information company at the intersection of politics and policy. Since its launch in 2007, POLITICO has grown to nearly 300 reporters, editors and producers. It distributes 30,000 copies of its Washington

newspaper on each publishing day and attracts an influential global audience of more than 35 million monthly unique visitors across its various platforms.

**Radio Television Digital News Association (“RTDNA”)** is the world’s largest and only professional organization devoted exclusively to electronic journalism. RTDNA is made up of news directors, news associates, educators and students in radio, television, cable and electronic media in more than 30 countries. RTDNA is committed to encouraging excellence in the electronic journalism industry and upholding First Amendment freedoms.

**The Society of Environmental Journalists** is the only North-American membership association of professional journalists dedicated to more and better coverage of environment-related issues.

**Society of Professional Journalists (“SPJ”)** is dedicated to improving and protecting journalism. It is the nation’s largest and most broad-based journalism organization, dedicated to encouraging the free practice of journalism and stimulating high standards of ethical behavior. Founded in 1909 as Sigma Delta Chi, SPJ promotes the free flow of information vital to a well-informed citizenry, works to inspire and educate the next generation of journalists and protects First Amendment guarantees of freedom of speech and press.

**The Tully Center for Free Speech** began in Fall, 2006, at Syracuse University's S.I. Newhouse School of Public Communications, one of the nation's premier schools of mass communications.

**The Washington Post** (formally, WP Company LLC d/b/a The Washington Post) is a news organization based in Washington, D.C. It publishes The Washington Post newspaper and the website [www.washingtonpost.com](http://www.washingtonpost.com), and produces a variety of digital and mobile news applications. The Post has won Pulitzer Prizes for its journalism, including the award in 2020 for explanatory reporting.

**CERTIFICATE OF COMPLIANCE**

1. This brief complies with the type-volume limitation of Second Circuit Local Rule 32.1(a)(4) because this brief contains 4,393 words, excluding the parts of the brief exempted under Federal Rule of Appellate Procedure 32(f) and.
2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Rule 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

/s/ Katie Townsend  
Katie Townsend  
*Counsel of Record*  
THE REPORTERS COMMITTEE  
FOR FREEDOM OF THE PRESS

Dated: August 13, 2020  
Washington, D.C.